



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Minutes of the February 11, 2008, Meeting of the
Commission on Governmental Ethics and Election Practices
Held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine

Present: Hon. David Shiah, Acting Chair and Hon. Edward M. Youngblood. Hon. Mavourneen Thompson, Michael Friedman, Esq. and Hon. Francis C. Marsano attended by teleconference.
Staff: Executive Director Jonathan Wayne.

Due to weather conditions, Chair Friedman could not attend the meeting in person. Mr. Shiah was nominated by Mr. Youngblood to chair today's meeting. On motion by Mr. Youngblood, seconded by Ms. Thompson, it was unanimously decided to have Mr. Shiah chair the meeting.

At 9:07 A.M., Acting Chair David Shiah convened the meeting.

The Commission considered the following items:

Agenda Item #1 Request for Waiver of Late-Filing Penalty/Katherine D. Pelletreau

Mr. Wayne explained that Katherine D. Pelletreau was registered as a lobbyist for the Maine Association of Health Plans in 2007. She was two days late in filing the annual report due on December 31, 2007. Ms. Pelletreau requests a waiver of the penalty because her husband had suffered a heart attack in the late fall and she was on leave from her work through December 31, 2007. The statutory penalty is \$200; however, the staff recommends a penalty of \$50 due to the health circumstances in Ms. Pelletreau's family.

Mr. Marsano stated that "late fall" seems ambiguous. He wondered whether any one on staff had asked her for more detailed information regarding how long she was away from work.

Mr. Wayne said a staff member had spoken to her, but he had not personally talked to her. He said when a treasurer or candidate has a health issue, the past practice has been for staff to be slightly more lenient. Ms. Pelletreau was notified of today's meeting, but she did not respond to the invitation.

Mr. Youngblood stated that he is not in favor of giving lobbyists a break, since this is their business and they know the filing deadlines for which they are responsible. He said this particular case may be reason to be more lenient and go with the staff recommendation to reduce the penalty to \$50.

Ms. Thompson stated she agreed with Mr. Youngblood. Ms. Thompson thought it might be a good idea to wait until we hear from the lobbyist as to when the medical emergency occurred and how long she was out of the office. Ms. Thompson further stated it is always in the Commission's best interest to get as much information as possible from the candidate or lobbyist in order to make a fair decision and to assess the fairest penalty.

Mr. Wayne said the staff would be willing to go back to Ms. Pelletreau and get more information and put this item back on the agenda for the March meeting.

Ms. Thompson made a motion to table this item until March 31. Mr. Marsano seconded. The motion passed unanimously.

Agenda Item #2 Proposed Rule Amendment

Mr. Wayne stated that the Joint Standing Committee on Legal and Veterans Affairs has requested that the Commission adopt a rule which would allow candidates to re-use signs from a previous election without updating the disclosure statement printed on the signs regarding who paid for the signs. This was a result of a bill put forward last year by Senator Elizabeth Schneider. He said if the treasurer's or committee's name changed, then the sign could be reused as long as the correct address was on the sign. Mr. Wayne said this would apply to any type of communication to voters. Mr. Wayne said that the LVA Committee will be sending a letter outlining instructions for the rule changes.

Mr. Marsano pointed out that section 1014 of Title 21-A, did not use the words 'campaign signs' in the description. He would like to see this phrase introduced into the statute. Mr. Marsano also outlined other changes he would recommend for this section. Mr. Marsano restated that the phrase 'campaign signs'

definitely needs to be in the statute, at the very least, for more detailed clarification on communications. He felt the signs could be reused as long as the rules are followed as to what is acceptable.

Ms. Thompson requested that Mr. Marsano's changes be done in writing to the Commission members in order to see these changes on paper. She also stated that any changes made must not allow confusion on the part of the voters. She said the voter needs to read communications and understand clearly what is being said.

Mr. Friedman stated that the signs need to be 100% correct and not 85% correct.

Mr. Youngblood said that care needs to be taken when dealing with specific communications. Does this mean mailers or any other communication needs to be addressed individually. He said this is probably why the statute was written in this general manner.

Mr. Marsano stated he feels that the words "campaign signs" should definitely be included because there would be no doubt as to whether they may be reused and these are one of the more expensive items in a campaign.

Mr. Shiah suggested this item be tabled until next month in order to see these suggested changes in writing.

Mr. Friedman stated that he agrees with Mr. Marsano regarding keeping the cost of campaign expenses down to a minimum where possible; however, he stressed the importance of having the correct information in all communications of the campaigns. He would not be in favor of the Commission sanctioning a practice that would allow misinformation on a campaign sign.

Ms. Thompson stated that she would support changes, but would like to see them in writing. She also stated the importance of accurate, up to date information on the signs.

Mr. Marsano said he agreed with Ms. Thompson but believes the statute should state specifically what is acceptable for candidates to make changes to the signs in a cost effective manner.

Mr. Youngblood moved to table this item until the March meeting; Ms. Thompson seconded. The motion passed unanimously.

Agenda Item #3 Proposed Investigation of 2006 Candidate Debra J. Reagan

Mr. Wayne explained that Debra J. Reagan was a 2006 candidate for the House of Representatives who was the only candidate remaining who has not returned unspent Maine Clean Election Act funds to the Commission. He said Ms. Reagan promised to make monthly payments but has not reliably paid the promised amounts. The last payment was returned for insufficient funds. Mr. Wayne said Ms. Reagan owes the State of Maine \$3,390. Mr. Wayne said the matter was referred to the Attorney General last year; however, it was decided to put her on a monthly payment schedule after warning her of the penalty she could incur if she does not return the funds. Since she has not fulfilled her obligation, the Commission staff recommends a full investigation of this candidate and requests authorization for a subpoena of her bank accounts. Mr. Wayne stated that there could be civil penalties involved.

Ms. Thompson said in the past, the Commission has been very strict about the use of public funds and how the candidates use those funds in order to maintain the public's trust. She asked if this investigation would include an audit.

Mr. Wayne said that the investigation could include an audit. He further stated that since the candidate had been so uncooperative, the staff felt that a subpoena would be in order.

Mr. Youngblood agreed that an audit should be done and the staff should be given the authority to subpoena the necessary records.

Mr. Marsano asked why this referral to the Attorney General's office has taken so long.

Mr. Wayne stated that due to work load, the staff counsel has been spread very thin. Mr. Wayne said that the priority changed to getting the money back through monthly payments by the candidate.

Mr. Marsano stated that the clean election funds need to be protected and this matter needs to be addressed more aggressively. He also agreed that an audit should be done; however, the subpoena needs to happen immediately.

Mr. Youngblood moved to follow the staff recommendation to investigate Ms. Reagan's misuse of Maine Clean Election funds by simultaneously conducting an audit, and taking all steps necessary, including the subpoenaing of records to get the investigation completed.

Ms. Thompson offered an amendment to the motion that would replace the word "misuse" with "use."

Mr. Marsano stated that clean election money is supposed to be returned and failure to return the money under any circumstances would be misuse.

Ms. Thompson withdrew her amendment.

The original motion passed unanimously.

OTHER BUSINESS

Carl Lindemann's February 7, 2008, Memo

Mr. Wayne stated that Phyllis Gardiner wrote a memorandum regarding Mr. Lindemann's request and it was e-mailed to all the Commission members. He was not sure if everyone had an opportunity to review it. All the Commission members had not had a chance to review Phyllis Gardiner's memo. It was decided to have Mr. Shiah read Ms. Gardiner's memo out loud. (Copy attached hereto.)

Ms. Thompson asked for clarification on complaint procedures.

Mr. Wayne said that the staff had proposed a rule which was meant to clarify that if the staff received a complaint that was outside the Commission's jurisdiction, it can return it to the complainant or refer it to the appropriate agency. This proposed rule was unrelated to Mr. Lindemann's request. Mr. Lindemann commented to that rulemaking saying that he thought that there should be a procedure for complaints against Commission members to be automatically referred to an outside agency. Mr. Wayne said his memo to the Commission stated that he thought that complaints against Commission members were so rare that they could be handled on a case-by-case basis. In that memo, Mr. Wayne also recommended against an automatic referral to an outside agency.

Ms. Thompson wondered if the Legislature would be the proper body to establish a procedure for dealing with complaints regarding a Commission member since the Commission members cannot judge themselves. She expressed her belief that there should be an appropriate avenue for a complainant to take a complaint against a Commission member.

Mr. Wayne said if the complainant felt aggrieved by a decision by the Commission because the Commission or a member of the Commission was biased, that person could file an action in the court. In other contexts, someone could, as Mr. Lindemann has already, bring the matter to the attention of the Legislature.

Mr. Friedman stated that the Commission is, like all others, authorized by statute. It does not have the power to hear issues that are not within its jurisdiction. He said not every matter brought forth by any citizen in Maine should be brought before this Commission. If other commissions have complaints brought against a commission member, the aggrieved individual may go to court to seek a judicial determination. Mr. Friedman stated that Mr. Lindemann has taken it upon himself to send individual Commissioners e-mails, letters, etc. He said that he thinks it is extremely inappropriate for an individual who has an interest pending before the Commission to deal directly with the members of the Commission to the exclusion of the staff. Mr. Friedman said excluding the staff from communications is very inappropriate.

Mr. Friedman also reviewed the duties of the Chair of the Commission. Mr. Friedman said part of those duties includes using the meeting time effectively by reviewing agenda items for jurisdiction and keeping meetings efficient. He also referred to the history of the MHPC and former Commissioner Jean Ginn Marvin and reminded the members that this Commission does not have jurisdiction to investigate or make recommendations with regard to fellow Commissioners. Mr. Friedman said individuals who do feel aggrieved, may go to the legislative leadership, the Governor or go to court, which Mr. Lindemann has done. Mr. Friedman further stated that since the Commissioner in question is no longer on the Commission, the issue is a moot point.

Mr. Lindemann addressed the Commission. He said the staff was included on his communications with the Commissioners. He said this issue has nothing to do with former Commissioner Ginn Marvin's qualifications and conduct. He said it deals with the dilemma of inappropriateness of having an officer of a regulated entity serve on the Ethics Commission. He said the treasurer of a political committee should not

be allowed to be a Commissioner. He said that the Commission should recognize the dilemma in this matter: on one hand, the Commission does have jurisdiction over this matter because it involves a regulated entity; on the other, the matter involves a former Commissioner which creates the problem of having her former fellow Commissioners sitting in judgment over her actions. The Commission should cede jurisdiction because of these extraordinary circumstances and allow this matter to go forward. He said that to do otherwise would mean that a conflicted agency would sit on a matter against a fellow Commissioner, and that it would be close to obstruction for this Commission to decide this matter.

Ms. Thompson asked for clarification as to what exactly Mr. Lindemann's major concern is. She summarized that this Commission voted unanimously that passing judgment on a fellow Commissioner is not within the Commission's jurisdiction. She asked if Mr. Lindemann would like to see the Commission have the ability to formally refer the complaint to another agency.

Mr. Lindemann stated that the decision the Commission made regarding its ability to make a determination on the qualifications of a fellow Commissioner was separate from the matter he was bringing before the Commission now. This matter involves a question of whether the Commission has a conflict of interest in that former Commissioner Jean Ginn Marvin is the treasurer of an entity that filed a report with the Commission, a report which is the subject of his complaint. He stated that he did not see how it would be appropriate for the Commissioners who sat on the Commission with Ms. Ginn Marvin or the Executive Director, Mr. Wayne, to participate in a hearing on the complaint.

Ms. Thompson said since the Commission has several new members, perhaps the issue should be heard again in order for the Commission to find out what should be done in these situations. She did not think it should rest until it is decided how to deal with conflict of interest issues.

Mr. Friedman asked Ms. Thompson to clarify which issue she was speaking about: the issue regarding the adequacy of the 1056-B filing or the issue of conflict of interest of the Commission.

Ms. Thompson said she believes the more important issue is how to deal with a complaint by a citizen of conflict of interest of a member of the Commission. She said the Superior Court would deal with the 1056(B) issue. She recognized that the members of the Commission cannot deal with a complaint of conflict of interest, but perhaps a referral to another agency would be appropriate.

Mr. Friedman said that he did not necessarily disagree with Ms. Thompson, but he said the Commission does not have jurisdiction to even discuss the issue of conflict of interest. He did not think it was necessary for the Commission to provide advice on issues that are outside of the Commission's jurisdiction. He said if an aggrieved citizen has a complaint, the remedy is to go to court or to seek a political solution. He said that the fact that there are new Commissioners does not mean that the Commission has jurisdiction or that the issue should be discussed again. He would strongly discourage the Commission take any more time to discuss this issue during a regular Commission meeting.

Mr. Marsano said he has not seen or heard what the exact parameters of the complaint in Superior Court are. He said that he thought there probably was a way in which the two issues are involved. For instance, Mr. Lindemann's suggestion that, as he was speaking on a matter, a person who has recused sat directly behind him – is that a problem? Is that in the complaint? Does that relate to the conflict? What does it do with respect to the recusal? Another facet of the issue is the statements by Mr. Lindemann and Mr. Wayne that no disclosure of the Commissioner's position in the organization was made to the Governor or the legislative leadership. He said that since he did not know what the case was all about, he did not want to speak with respect to the otherwise philosophical issue until the case was finally resolved. Mr. Lindemann's analogy to jury selection was interesting but the difference was that the breadth of the screening that the Governor and Legislature does in examining potential Commission members is exceedingly greater than the jury screening process. Ultimately, once the case is resolved and is even farther in the past than it is now, the philosophical issue can come back to the Commission, if it wants to take it up again, but in the end, the ultimate decision will lie with the Commissioner who must make that final decision of recusal. He stated that he did not want to do anything regarding these issues until the case was over.

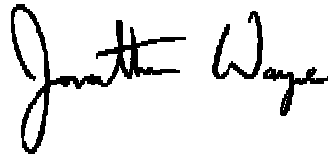
Mr. Friedman said that he did not think that it was necessary for the Commission to do anything regarding this matter at this time. Mr. Marsano agreed. Mr. Shiah asked whether it was the pleasure of the Commission to close this matter. It was the consensus of the Commission to close the matter.

Ms. Thompson brought up the issue regarding whether to insert a public comment item on the monthly agendas. It was decided to put a discussion of this suggestion on the next agenda for the March meeting.

Ms. Thompson also inquired as to how audits were being handled with the resignation of the staff auditor in December. Mr. Wayne said that Mr. Dinan waited until the end of the audit of the 2006 candidates before he retired. The hiring process will be initiated soon to find a replacement for him.

There being no further business, the meeting adjourned at 10:35 a.m.

Respectfully submitted,

A handwritten signature in black ink, reading "Jonathan Wayne". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Jonathan Wayne, Executive Director